

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Stephen Sales Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1970,1971. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of April, 1980, he served the within notice of Decision by certified mail upon Stephen Sales Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Sales Co.
460 Park Ave. S.
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of April, 1980.

Janne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Stephen Sales Co. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1970,1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of April, 1980, he served the within notice of Decision by certified mail upon Louis A. Fredman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

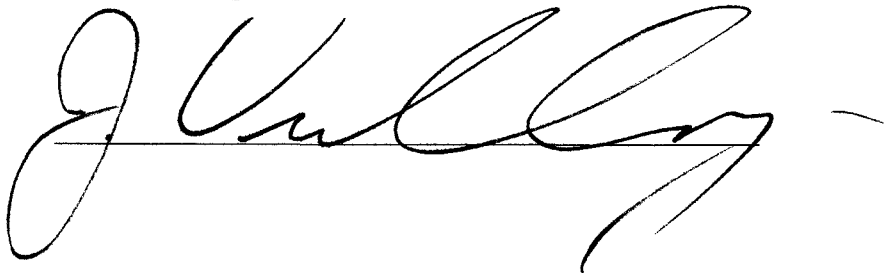
Mr. Louis A. Fredman
275 Madison Avenue
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
4th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 4, 1980

Stephen Sales Co.
460 Park Ave. S.
New York, NY 10016

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Louis A. Fredman
275 Madison Avenue
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STEPHEN SALES COMPANY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1970	:	
and 1971.	:	

Petitioner, Stephen Sales Company, 460 Park Avenue South, New York, New York 10016, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970 and 1971 (File No. 13775).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1977 at 10:45 A.M. Petitioner appeared by Louis A. Friedman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioner had a regular place of business in another state or states which it systematically and regularly used in carrying on its business, thus, entitling it to allocate income outside New York State.

FINDINGS OF FACT

1. Petitioner, Stephen Sales Company, timely filed New York State partnership returns for 1970 and 1971. On it, it reported all items of income and deduction and allocated business income in accordance with amounts which were derived from sources within and without New York State, which resulted in the reporting of no taxable business income for 1970 and of a business loss for 1971.

2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency with an explanatory Statement of Audit Changes to "Walter Jaffe, Carroll Gomberg (dec'd), Chester Hillsgrove and Arthur Hallen, d/b/u Stephen Sales Co." The deficiency was based on the disallowance of the partnership's allocation of income on the grounds that petitioner did not have a regular place of business outside New York State.

3. Petitioner, Stephen Sales company, was a designer and sales agent for two furniture manufacturers, one located in Connecticut and the other in Massachusetts. As such, petitioner maintained an office and showroom in New York State and offices at the factories in Connecticut and Massachusetts. At the factories, petitioner received a lower commission on sales in lieu of rent, but was not allowed to display its name to the public within the factories. Two partners spent 50% of their time at the factory sites and worked with the manufacturers in the design and manufacturer of new lines of furniture.

4. Petitioner received commissions from sales consummated at the factories. These sales were shipped and billed by the factories in Massachusetts and Connecticut, and did not go through the New York office.

CONCLUSIONS OF LAW

A. That petitioner, Stephen Sales Company, timely filed New York State partnership returns for 1970 and 1971, pursuant to Articles 22 and 23 of the Tax Law. Such filing was done in a manner which adequately informed the Income Tax Bureau of the nature and amount of all items of income.

B. That sections 722 and 683(a) of the Tax Law states that any tax under this article shall be assessed within three years after the return was filed. That the Notice of Deficiency issued on February 24, 1976 was not issued within the limitation period prescribed for in the Tax Law.

C. That in view of Conclusion of Law "B," no determination is necessary in this proceeding as to whether petitioner is entitled to an allocation of income without New York State.

D. That the petition of Stephen Sales Company is granted and the Notice of Deficiency issued on February 24, 1976 is cancelled.

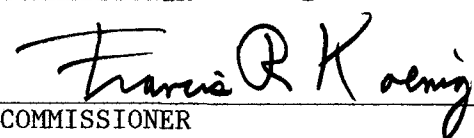
DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER